

Department of Justice

§ 68.41

may grant a continuance to enable the objecting party to meet such evidence.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

§ 68.40 Evidence.

(a) *Applicability of Federal rules of evidence.* Unless otherwise provided by statute or these rules, the Federal Rules of Evidence will be a general guide to all proceedings held pursuant to these rules.

(b) *Admissibility.* All relevant material and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence. Stipulations of fact may be introduced in evidence with respect to any issue. Every party shall have the right to present his/her case or defense by oral or documentary evidence, depositions, and duly authenticated copies of records and documents; to submit rebuttal evidence; and to conduct such reasonable cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge shall have the right in his/her discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to reasonable bounds so as not to prolong the hearing unnecessarily, and unduly burden the record. Material and relevant evidence shall not be excluded because it is not the best evidence, unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When only portions of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the Administrative Law Judge and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the original document should be made available for examina-

tion and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties.

(c) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and to the extent permitted by the Administrative Law Judge, the transcript shall include argument or debate thereon. Rulings on such objections shall be made at the time of objection or prior to the receipt of further evidence. Such ruling shall be a part of the record.

(d) *Exceptions.* Formal exceptions to the rulings of the Administrative Law Judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the Administrative Law Judge is made or sought, makes known the action he/she desires the Administrative Law Judge to take or his/her objection to an action taken, and his/her grounds therefor.

(e) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the Administrative Law Judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

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§ 68.41 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision, of